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In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, C T Corporation System and associated companies deal with and act for lawyers exclusively.

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Kentucky's New Corporation Law

A new Kentucky general corporation law became effective July 1, 1946, through the enactment of Chapter 271, Laws of 1946, enacting Sections 271.005 et seq. of the Kentucky Revised Statutes and repealing the comparable sections formerly in effect relating to business corporations.

Outstanding features of the new law may be noted as follows:

There is a reduction in the tax to be paid upon the organization of a Kentucky corporation.

Existing Kentucky business corporations became subject to the new provisions without the necessity of taking any action on their part. The principal office or place of business specified in their articles of incorporation became the registered office of these companies and their process agents were continued as such.

The new law may be said to be modern and convenient to employ. In its principal features, it is not unlike the Illinois Business Corporation Act of 1933 and the Missouri General and Business Corporation Act of 1943.

As to foreign corporations, the provisions relating to them were reenacted without any substantial change except the following:

It is no longer required that the corporate name be conspicuously displayed at the principal place of business as heretofore.

The penalty for failure to qualify (a fine of not less than $100 nor more than $1,000), formerly applied to the corporation and any agent or employee transacting business for it in the state. The provision now reads:

> "Any corporation that does business in this state without complying with the provisions of this chapter that require certain things to be done before doing business, and any *officer, director* or agent of the corporation who knowingly participates in such unauthorized doing of business, shall, for each offense, be fined not less than $100 nor more than $1,000."

The agent for the service of process upon a corporation, domestic or foreign, may be either an individual resident of the state or a corporation authorized to transact business in the state and authorized by its articles or certificates of incorporation to act as such agent.

Domestic Corporations

Illinois.

Penalty judgment entered against corporate and individual defendants for refusal to permit inspection of books and records where purpose of inspection was a proper one. Petitioner stockholder sought by mandamus proceeding to compel his corporation and the individual defendant officers to permit him, or his agents or attorneys, to inspect and examine the list of names of the stockholders of the corporation, the record of their addresses and the number of shares held by each and to make extracts. From a judgment denying the writ petitioner appealed. This judgment was reversed and the writ was granted by the Appellate Court of Illinois, First District, Second Division, which disagreed with the conclusion of the lower court that before a writ would be granted the petitioner would have to show "shenanigans somewhere along the line." The Appellate Court pointed out that "the petitioner was not obliged to show mismanagement or maladministration of the respondent corporation before he would be entitled to a writ," and indicated that the burden placed upon a petitioner by the applicable statute, Section 45 of the Business Corporation Act, "is to prove good faith and a proper purpose in demanding a list of stockholders." The court noted that the petitioner had proved that his purpose in requesting a list of the stockholders was to solicit proxies from the stockholders in order to bring about the election of outside directors and that this purpose had been held by the court in a prior decision to be a proper one. A penalty judgment was ordered entered against each of the respondents for their wrongful refusal to comply with petitioner's demand for permission to inspect the books and records. *Doggett v. North American Life Ins. Co. of Chicago et al.*, 66 N. E. 2d 747. McCarthy, Witry, Lyon & McCarthy (Emmett J. McCarthy and George R. Lyon, of counsel), of Chicago, for appellant. Arthur C. Rooney of Chicago, for appellees.

New York.

Holder of preference stock of a consolidating company, on which accumulated dividends were unpaid, who had not asked for appraisal of the stock, ruled not entitled to demand accumulated dividends and also to take shares in the consolidated company. Plaintiff, owned 500 shares of 7% prior preference cumulative stock of a New York corporation on which there were dividend arrears aggregating $95 per share at the time it was consolidated with a Colorado corporation. He took no part in the stockholders' meeting of his company which authorized the consolidation, under which holders of the 7% stock mentioned were to receive for each such share, including all accumulated and unpaid dividends thereon, one share of 4% cumulative preferred stock and three and one-half shares of the common stock of the consolidated or continuing company. Several months after

the consolidation had been consummated, plaintiff instituted suit, seeking injunctive relief against the payment of dividends on the stock of the consolidated corporation until plaintiff had been paid the accumulated dividends on the 7% stock of the New York company, which he had not converted into stock of the new company, and in connection with which he had not sought an appraisal under Section 91(7) of Article 8 of the Stock Corporation Law. The Court of Appeals of New York affirmed a judgment in favor of the defendant, the consolidated company, dismissing the complaint on the merits. The court found no basis for plaintiff's insistence that he might demand the dividends accumulated upon his stock and at the same time take the new shares of the consolidated company, as this was contrary to the certificate of consolidation and "destructive of the whole statutory process." *Anderson v. International Minerals & Chemical Corporation,* 295 N. Y. 343, 67 N. E. 2d 573. George W. Whiteside, Leonard P. Moore and Henry D. Bulkley of New York City, for appellant. Orison S. Marden and Glover Johnson of New York City, for respondent.

Foreign Corporations

Delaware.

State Supreme Court gives judgment for defendant corporation in action of debt on a foreign judgment. In *Portscheller v. Atlas Mutual Benefit Association,* 38 A. 2d 607, (The Corporation Journal, November, 1944, page 224), the plaintiff was a beneficiary under a policy issued by defendant's predecessor, a Colorado corporation, to the insured in Michigan. She instituted this action of debt in the Superior Court of Delaware on a judgment obtained against defendant in a Michigan court. Defendant there pleaded that the Michigan court did not have jurisdiction to render the judgment sued upon. The Delaware court examined the activities of defendant's predecessor in Michigan, that corporation not being licensed in that state. These activities, briefly, consisted of the solicitation of business for that company by an agent designated by it, who solicited persons in Michigan for a period of thirty days. He was successful in obtaining only two pieces of business, one of which involved the issuance of the certificate upon which the Michigan judgment was obtained. The Delaware Superior Court concluded that these activities were sufficient to give jurisdiction to sustain service against the company upon the Secretary of State, and remarked that it was not concerned whether the agent was doing a successful business but whether he was, in fact, doing business for the company in Michigan. It said: "The company wanted members and employed Koch to get applications. He was acting as agent in each solicitation, successful or unsuccessful. He was doing business in each solicitation." The Delaware Supreme Court, upon appeal, after an examination of the facts and the pertinent decisions, concluded that the Michigan court was without jurisdiction over the defendant's predecessor, that the

judgment sued on was not entitled to full faith and credit, and that the judgment of the court below should be reversed and judgment entered for the defendant. The court remarked: "There is nothing in the record to show that the association ever had an office in Michigan, or displayed a sign there, or advertised its business there; or that any contribution or assessment was ever paid in Michigan to any representative except the two initial payments to the agent, Koch, which were not in furtherance of completed contracts; or that the association ever investigated or settled a claim for benefits in Michigan either through a local agent or through a representative sent there for the purpose; or that it ever had in Michigan an agent with authority to bind it in any way. In the circumstances shown we agree fully with the conclusion announced in the dissenting opinion below that the activities of the defendant's predecessor in the State of Michigan amounted to no more than solicitation, and that it was not present in that State on or about September 10, 1934, in such manner as to be subject to the local process." *Atlas Mutual Benefit Association v. Portscheller,** 46 A. 2d 643. Clair J. Killoran of Wilmington, for plaintiff in error. Collins J. Seitz and Southerland, Berl and Potter of Wilmington, for defendant in error. Commerce Clearing House Court Decisions Requisition No. 354795.

* The full text of this opinion is printed in the **State Tax Reporter**, Delaware, page 511. (Formerly known as **The Corporation Tax Service.**)

North Carolina.

Service on unlicensed foreign corporation, by serving Secretary of State as its agent, upheld where cause of action arose prior to discontinuing of activity and withdrawal of its property from state. Defendant foreign corporation and an individual were sued as partners for the death of plaintiff's intestate as a result of an airplane accident. The lower court denied the corporate defendant's motion to quash the summons and invalidate the service upon it. This defendant had never been domesticated in North Carolina. Under an arrangement with the individual defendant, it had maintained four airports in the state. The accident which caused the death of plaintiff's intestate, a student pilot, occurred on December 31, 1944. On April 19, 1945, the corporate defendant withdrew all of its property then in the state and discontinued the operation of the four airports. Summons, issued December 10, 1945, was served on the corporate defendant under G. S. Sec. 55-38 by leaving a copy of the summons and complaint with the Secretary of State, who mailed it to that defendant. The Supreme Court of North Carolina, after an examination of the relations between the two defendants, observed that appellant corporation was engaged in the business of operating in the state a chain of airports in furtherance of the general scheme or plan of its organization and, in so doing, it enjoyed the benefits and protection of the laws of the state. "It thereby subjected itself to the jurisdiction of the courts of this State for the purpose of liti-

gating liabilities created during its stay here," concluded the court, in upholding the service and affirming the judgment. *Harrison v. Corley et al.*,* 37 S. E. 2d 489. Paul J. Story and Proctor & Dameron of Marion, for plaintiff-appellee. Edwin S. Hartshorn of Asheville, and W. R. Chambers of Marion, for defendant-appellant Southeastern Air Service, Inc.

* The full text of this opinion is printed in the **State Tax Reporter,** North Carolina, page 306. (Formerly known as **The Corporation Tax Service.**)

Pennsylvania.

Service on unlicensed foreign corporation, having no activities in state at time of service, set aside. Defendant Delaware steamship company, not licensed in Pennsylvania, appeared specially in the court below, where it was successful in having service of process against it set aside. Upon appeal, by the plaintiff, the Supreme Court of Pennsylvania affirmed the order of the Court of Common Pleas of Philadelphia County. The evidence showed defendant maintained no place of business in Pennsylvania and that the alleged service was made upon a clerk of another corporation, as agent of defendant, which had arranged for the docking, locally, subsequent to the service, of four vessels for the War Shipping Administration, one of which was owned by defendant and all of which were operated by defendant as general agent for the War Shipping Administration in the operation of the Administration's vessels. At the time of the alleged service, the defendant had no ships in Philadelphia and the local corporation was not engaged in doing anything on behalf of defendant. The court concluded that "there is not enough in the record to sustain in our courts a judgment in personam against the defendant foreign corporation." *Holliday v. Pacific Atlantic S. S. Corporation,* 47 A. 2d 254. Abraham E. Freedman and Freedman, Landy & Lorry of Philadelphia, for appellant. Thomas E. Byrne, Jr. (appearing specially only), John B. Shaw, Timothy J. Mahoney, Jr., and Krusen, Evans & Shaw of Philadelphia, for appellee.

South Carolina.

Corporation engaged in interstate commerce ruled subject to service of process but not to qualification requirements. This decision is unique in that the Supreme Court of South Carolina discussed at some length the question of "doing business," both from the standpoint of the validity of service of process upon an unlicensed foreign corporation and from the standpoint of the necessity of qualification of the same corporation in South Carolina. The court concluded that the company was "doing business" so as to be amenable to service, but was not "doing business" so as to be required to be licensed as a foreign corporation. The corporation shipped motor cars and accessories to its dealers in South Carolina in interstate commerce. "Here," observed the court, "we have the ingenious

dealership contract, with its manifold controls over the dealer by the corporation, its retention of right to repurchase its cars, trucks and parts, its servicing of its warranties delivered by the dealers with its cars and trucks to the consumer-purchasers; its sending of its admitted representatives into the state for various purposes in connection with its activities in commerce in the state, etc." In the light of the decided cases the court found such activities to give the state jurisdiction over the company for service of process upon it. As to the necessity of qualification, the court said: "Appellant's business in South Carolina is interstate in character, according to the evidence, and it cannot be required to domesticate or suffer the statutory penalty for failure thereabout. Infliction of the latter would burden interstate commerce, which the state cannot constitutionally do." *State v. Ford Motor Co.*,* 38 S. E. 2d 242. Cansler & Cansler of Charlotte, N. C., and Robinson & Robinson and C. T. Graydon of Columbia, S. C., for appellant. John M. Daniel, Atty. General, M. J. Hough and T. C. Callison, Asst. Attys. General, and Nelson, Mullins & Grier of Columbia and Thomas M. Boulware of Allendale, for respondent.

* The full text of this opinion is printed in the **State Tax Reporter**, South Carolina, page 507. (Formerly known as **The Corporation Tax Service.**)

Utah.

Unlicensed foreign corporation with office in state from which it solicited shipment of freight over its lines in other states and where it received and facilitated claims for losses, held subject to service of process. In the district court, an Ohio railroad corporation, not licensed in Utah, was sued by a Utah corporation on a claim related to a loss allegedly occurring on the Ohio corporation's road east of Illinois, the shipment not having touched Utah at any point. The defendant Ohio company in that suit, the plaintiff here, sought to restrain the district court from continuing the action against it and appeared specially to move to quash service of the summons on the ground that it was a foreign corporation not engaged in business in Utah and that it would constitute an undue burden on interstate commerce to compel it to defend the action in question in Utah. The Ohio corporation had no tracks west of the Missouri river. It maintained an office at Salt Lake City, Utah, for the convenience of its "general agent," an assistant and a clerk. These solicited freight for routing over the corporation's railroad and promoted the company's good will. One of the shippers whose freight was solicited was Northwestern Turkey Growers Association, the plaintiff in the suit below. The Ohio corporation's only property in Utah consisted of office furniture and equipment, books and records and claims against another railroad, not related to any Utah activities of the plaintiff Ohio corporation in Utah. The plaintiff also handled claims for losses incurred by Utah shippers on the lines of the plaintiff, the claims being sent to another state for consideration. The Utah

Supreme Court regarded the Ohio company as present in Utah so as to be subject to the service of summons. The court noted that very little more than solicitation is required to make a foreign corporation amenable to service of process. In this case, it concluded that the activities of the local agents in receiving claims for losses arising out of the business solicited and the facilitation of claims constituted sufficient business activity to meet such a requirement. The court also concluded that, under the circumstances, it was not an undue burden on interstate commerce to require the Ohio company to contest such a suit in Utah. A writ of prohibition restraining the district court from proceeding with the suit before it was recalled. *Wabash Railroad Company v. District Court, et al.,** 167 P. 2d 973. Robert B. Porter, Jr., of Salt Lake City, for plaintiff. Harry D. Pugsley, of Salt Lake City, for defendant. Commerce Clearing House Court Decisions Requisition No. 354805.

* The full text of this opinion is printed in the **State Tax Reporter,** Utah, page 505. (Formerly known as **The Corporation Tax Service.**)

Taxation

Alabama.

Foreign corporation held not required, several years after qualification, to pay additional qualification fee because of increase in capital employed in state over amount employed at time of qualification. "The purpose of the suit," said the Supreme Court of Alabama, "is to construe Sections 339-342, Title 51, Code of 1940, so as to determine whether a foreign corporation which has paid the qualification fee or admission tax at the time it qualified for business in the State of Alabama may be required several years later to pay an additional qualification fee or admission tax because of an increase in capital employed in the state over the amount of capital employed at the time of qualification." Section 339 contains this language: "Provided that if after qualification a corporation shall employ an amount greater than that on which admission fees have been paid, it shall immediately report and pay on such additional amount." The court, after an examination of Sections 339-342, came to the conclusion that it did not "necessarily follow that at any time and as often as the amount of capital employed by the foreign corporation is increased in any amount over the amount employed at the time of qualification, an additional admission fee or entrance tax must be paid for each such increase." The court regarded a foreign corporation as not under a duty to report increases from day to day or be in default, and concluded "that the legislature intended for the fee for admission to be payable but once as Section 341 specifically declares." The "additional amount" referred to in that portion of Section 339 quoted above, was viewed as limited to an amount required to be paid in the calendar year in which qualification occurs, by reason of a corporation's incorrect estimate

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Dover, Del.....30 Dover Green	Washington 4.....1329 E. St. N. W.
Hartford 3.....50 State Street	Wilmington 99....100 West 10th Street

of the capital to be employed during that year. "Assuming," said the court, "that an additional payment is made during the calendar year, the effect under the statute is one payment, since the additional amount should have been included in the original payment." The judgment of the lower court that a foreign corporation could not be required, several years after qualification, to pay an additional qualification fee or admission tax because of an increase in capital employed in the state over the amount employed at the time of qualification, was affirmed. *Dowling, Commissioner of Revenue v. The Texas Company,** 26 So. 2d 590. Wm. N. McQueen, Atty. General, and John W. Rish, Gardner F. Goodwyn, Jr., and H. Grady Filler, Asst. Attys. General, for appellant. White, Bradley, Arant & All, Frontis H. Moore and Douglas Arant, of Birmingham, for appellee. Commerce Clearing House Court Decisions Requisition No 358436.

* The full text of this opinion is printed in the **State Tax Reporter, Alabama**, page 309. (Formerly known as **The Corporation Tax Service.**)

Arkansas.

Delivery of goods which were within state to persons within state on telegraphic orders received from other states, held subject to sales tax. Appellant, a retail florist in Arkansas, received telegraphic orders from florists in other states to deliver his flowers to persons in Arkansas. A regulation of appellee commissioner made receipts from such transactions taxable under the Arkansas Gross Receipts Tax Law. The Supreme Court of Arkansas overruled appellant's contention that the sales involved were sales in interstate commerce and that to tax them in Arkansas would be an unconstitutional burden on such commerce and upheld the tax as coming within the terms of the Gross Receipts Tax Law. *Johnson v. Cook, Commissioner of Revenues,** 192 S. W. 2d 975. Heartsill, Ragon and DuVal Johnston of Fort Smith, for appellant. O. T. Ward of Little Rock, for appellee.

* The full text of this opinion is printed in the **State Tax Reporter, Arkansas**, page 7520. (Formerly known as **The Corporation Tax Service.**)

California.

The Supreme Court of the United States affirms judgment holding California Income Tax Act of 1937 applicable to unlicensed foreign corporation engaged exclusively in interstate commerce. In *West Publishing Company v. McColgan*, 166 P. 2d 861, (The Corporation Journal, April, 1946, page 128, and May, 1946, pages 143 and 144), the California Supreme Court held an unlicensed foreign corporation subject to the Income Tax Act of 1937, under circumstances where the company had salesmen operating from offices in that state who solicited orders in interstate commerce and who also effected collections and made adjustments of complaints of local customers. An appeal filed in the Supreme Court of the United States on May

23, 1946, was disposed of by that court, without opinion, on June 10, 1946, with these words: "Per curiam: The motion to affirm is granted and the judgment is affirmed. *United States Glue Co. v. Town of Oak Creek*, 247 U. S. 321; *Interstate Busses Corp. v. Blodgett*, 276 U. S. 245; *Memphis Natural Gas Co. v. Beeler*, 315 U. S. 649, 656; *International Shoe Co. v. Washington*, 326 U. S. 310." *West Publishing Company v. McColgan*, 66 S. Ct. 1378. (*Petition for rehearing filed*, June 28, 1946; Docket No. 1255.)

Missouri.

Foreign corporation, filing amendment extending its corporate existence, ruled not required to pay domestication tax again. Relator corporation, incorporated in Kansas in 1894 for a term of 50 years, was issued a certificate of authority to transact business in Missouri in 1916. It filed a proper certificate in Kansas to extend its corporate existence on January 22, 1944 and shortly afterward tendered an authenticated copy thereof to the Secretary of State of Missouri with the regular filing fee. Relator sought by mandamus to compel the Secretary of State of Missouri to file the authenticated amendment to its articles extending its corporate duration for 50 years. Refusal was on the ground that relator was required to pay again the same domestication fee or tax, based on capital represented, required for a foreign corporation to obtain an original certificate of authority to transact business in Missouri. The Missouri Supreme Court, after an examination of the pertinent statutes, concluded: "We think that the reasonable construction of these provisions is to authorize all corporations to extend duration by the same charter amendment method. Thus foreign and domestic corporations have been placed on the same basis by the 1943 Act both as to payment of tax upon beginning business, and upon increase of capital, and as to not being required to pay an additional tax upon extension of duration. This was undoubtedly the intention of the 1943 Act, since foreign and domestic corporations were previously upon the same basis of both being required to pay the tax upon extension of duration. This construction likewise eliminates all inequality as to payment of such taxes as between corporations (whether domestic or foreign) with perpetual existence and those of limited duration. We, therefore, hold that relator is not required to pay another domestication tax to file its charter amendment of extension of duration." A peremptory writ of mandamus was therefore ordered to be issued. *State of Missouri ex rel. H. D. Lee Co., Inc. v. Bell*,* 195 S. W. 2d 492. Charles M. Blackmar, Henry I. Eager and Kenneth E. Midgley (Michaels, Blackmar, Newkirk, Eager & Swanson, of counsel), of Kansas City, for relator. J. E. Taylor, Attorney General, and Aubrey R. Hammett, Jr., Asst. Attorney General, for respondent. Commerce Clearing House Court Decisions Requisition No. 358299.

* The full text of this opinion is printed in the **State Tax Reporter**, Missouri, page 203. (Formerly known as **The Corporation Tax Service.**)

Pennsylvania.

Machinery of Federal agency ruled subject to property taxation as real estate. In the case of *In re Defense Plant Corporation*, 39 A. 2d 713, (The Corporation Journal, May, 1945, page 353), the Pennsylvania Supreme Court had before it the question whether machinery owned by appellant Federal agency was to be regarded as real property and subject to local property taxation as such. A Federal statute did not permit states and local governments to impose taxes upon the personal property of certain agencies, of which appellant was one, but did permit their real property to be taxed "to the same extent according to its value as other real property is taxed." The state Supreme Court concluded that the machinery was taxable under the law of that state as real estate. Upon appeal, this judgment has been affirmed by the Supreme Court of the United States. The highest court regarded the Pennsylvania definition of real property as binding upon it, but indicated that definition could not govern if it conflicted with the scope of that term as used in the Federal statute. After an examination of the statute, the court concluded that such a conflict was not present. The language of the statute, to the effect that the property of the agencies was to be subject to local taxation "to the same extent according to its value as other real property is taxed," was regarded as indicating "an intent to integrate Congressional permission to tax with established local tax assessment and collection machinery." *Reconstruction Finance Corporation, Successor to Defense Plant Corporation v. County of Beaver*, 66 S. Ct. 992. Robert L. Stern of Washington, D. C., for appellant. John G. Marshall of Beaver and Edward G. Bothwell of Pittsburgh, for appellee. John L. Nourse of Los Angeles, Cal., for State of California, as amicus curiae, by special leave of Court. Sherrill Halbert of Modesto, Cal., for the County of Stanislaus, Cal., as amicus curiae, by special leave of the Court. Commerce Clearing House Court Decisions Requisition No. 356538.

Texas.

Texas Supreme Court affirms judgment that stock which was redeemed and retired without complying with statutory requirements for the decrease of capital stock, is still to be included as outstanding capital stock for franchise tax purposes. In *A. B. Frank Company v. Latham et al.*, 190 S. W. 2d 739, (The Corporation Journal, January, 1946, page 72), the Texas Court of Civil Appeals, Austin, held that, for franchise tax purposes, corporate stock which was redeemed and retired without complying with the statutory requirements for the decrease of capital stock was still to be included in the base of the tax as outstanding capital stock. Upon appeal, the Texas Supreme Court has affirmed the judgment of the Court of Civil Appeals. *A. B. Frank Co. v. Latham et al.*,* 193 S. W. 2d 671. Dodson, Ezell & Duke of San Antonio, for petitioner. Grover Sellers, Attorney General, W. V. Geppert and J. Arthur Sandlin, Assistants

to Attorney General, for respondent. Commerce Clearing House Court Decisions Requisition No. 354811.

* The full text of this opinion is printed in the **State Tax Reporter,** Texas, page 578. (Formerly known as **The Corporation Tax Service.**)

Wyoming.

State Supreme Court rules there are two independent sales taxes, these being the 2% tax payable by the vendee and the 1% tax payable by the vendor, and that vendor may not apply "excess" collected as part of the 2% against the 1% tax payable by the vendor." "The Wyoming Sales Tax law," said the Wyoming Supreme Court, "appears to be unique in that it requires both vendors and vendees to pay a tax based on sales of tangible personal property." A 2% sales tax is imposed on sales of 25¢ and over, to be collected by the seller from the purchaser and a 1% sales tax is imposed on sales of 24¢ and less, to be absorbed and paid by the seller. The seller may, in lieu of keeping a detailed segregated record of sales of 24¢ or less, elect to pay 2% on the total sales upon which a tax is imposed. Plaintiff operated stores in the state where sales of both more and less than 25¢ were made and elected to keep a segregated record of sales of 24¢ and less. As to the 2% tax, the vendor was required by statute to pay to the state any excess collected above his total taxable sales. Plaintiff so collected approximately $1,400, which excess it sought to apply against the 1% tax to be absorbed by the vendor on sales of 24¢ or less. The court ruled that the 2% tax and the 1% tax were independent taxes and interpreted the statute to require the vendor to collect and pay a 2% tax on all taxable sales, regardless of amount, to pay any excess to the state which was collected at the 2% rate on sales of 25¢ or more and to be obliged to remit the 1% tax on sales below 25¢. The court's opinion was lengthy but, in an even more extended dissenting opinion, the Chief Justice attacked the majority opinion as an unjustified application of the law, concluding that two independent taxes were not contemplated by the legislature and that the offset sought by the plaintiff should have been allowed. *Walgreen Company v. State Board of Equalization,** 166 P. 2d 960; rehearing denied, 169 P. 2d. 76. John E. Pickett of Cheyenne and Anthony F. Zarlengo of Denver, Colorado, for the plaintiff and appellant. Louis J. O'Marr, Attorney General, Hal E. Morris, Deputy Attorney General, and Frank M. Gallivan, Assistant Attorney General, of Cheyenne, for the defendant and respondent. Commerce Clearing House Court Decisions Requisition No. 353572.

* The full text of this opinion is printed in the **State Tax Reporter,** Wyoming, page 7772. (Formerly known as **The Corporation Tax Service.**)

Appealed to the Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

October 1946 Term

CALIFORNIA. Docket No. 46. *Richfield Oil Corporation v. State Board of Equalization*, 163 P. 2d 1. (The Corporation Journal, February, 1946, page 88). Application of retail sales tax to sales of oil to foreign governments, delivered f. o. b. California port to buyer's tanker. **Appeal filed, February 18, 1946. Further consideration of the question of jurisdiction postponed to the hearing of the case on the merits, March 25, 1946.**

INDIANA. Docket No. 3. *Hewit v. Freeman*, 51 N. E. 2d 6. (The Corporation Journal, November, 1944, page 233.) Indiana Gross Income Tax Act—application to proceeds from sales of corporate stocks and bonds by resident owner to nonresidents through brokers. **Appeal filed, March 13, 1944. Jurisdiction noted, April 3, 1944. Argued, November 8, 1944. Restored to Docket and assigned for reargument, June 18, 1945. On reargument, counsel requested to address themselves in their briefs and on oral argument to specified questions, October 8, 1945.**

NEW YORK. Docket Nos. 29-30. *Carter & Weeks Stevedoring Co. v. McGoldrick et al.; John T. Clark & Son v. McGoldrick et al.*, 294 N. Y. 906, 908. (The Corporation Journal, December, 1945, page 52.) New York City business tax—applicability to stevedoring activities within city limits. **Petition for certiorari filed, October 17, 1945. Certiorari granted, November 19, 1945. Argued, March 1, 1946. Restored to the docket and assigned for reargument before a full bench, April 22, 1946.**

OHIO. Docket No. 75. *International Harvester Company v. Evatt, Tax Commissioner of Ohio*, 64 N. E. 2d 53. (The Corporation Journal, February, 1946, page 92.) State taxation of foreign corporations—Ohio franchise tax measured by volume of business done in Ohio. **Appeal filed, March 29, 1946. Probable jurisdiction noted, May 6, 1946.**

October 1945 Term

CALIFORNIA. Docket No. 1255. *West Publishing Co. v. McColgan*, 166 P. 2d 861. (The Corporation Journal, April, 1946, page 128.) Corporation Income Tax Act—application to foreign corporation engaged exclusively in interstate commerce. **Appeal filed, May 23, 1946. Motion to affirm granted and judgment affirmed, June 10, 1946.** (See page 192.) **Petition for rehearing filed, June 28, 1946.**

PENNSYLVANIA. Docket No. 40. *In re Defense Plant Corporation, (Defense Plant Corporation v. County of Beaver)*, 39 A. 2d 713. (The Corporation Journal, May, 1945, page 353.) State taxation—machinery owned by government agency and attached to freehold—taxation as real property. **Appeal filed, February 24, 1945. Probable jurisdiction noted, March 26, 1945. Argued, April 30, 1946. RFC substituted as party appellant, April 30, 1946. Affirmed May 13, 1946.** (See page 193.)

* Data compiled from **CCH U. S. Supreme Court Service 1946-1947.**

Regulations and Rulings

GENERAL—Where it is desired to effect, before the end of the calendar year, either the withdrawal of a foreign corporation from a state in which it has been authorized to do business or the dissolution of a domestic corporation, counsel have usually found that it is advisable to initiate the dissolution or withdrawal proceedings in most states as early as possible. Thus, if there are time-consuming requirements with which compliance must be had, ample provision may be made to satisfy such requirements before the end of the year. Frequently such requirements call for the preparation of income and other tax reports, the auditing of the corporate books, or the obtaining of certificates from various state departments that all taxes due the state have been paid. Inasmuch as, in some instances, a month or more may be consumed in effecting such compliance, it is advisable to investigate and institute dissolution or withdrawal proceedings, wherever possible, well in advance of the close of the year.

INDIANA—The State Board of Tax Commissioners has recently revised its rules and regulations relating to property taxes and the general intangibles taxes.

MINNESOTA—Income Tax regulations have recently been completely revised by the Department of Taxation. (State Tax Reporter, Minnesota, ¶¶ 14-500 et seq.)

NEW MEXICO—The filing fee charged to a foreign corporation for merely changing the number of shares of stock and not increasing its capital stock is $20. (Opinion of Attorney General to State Corporation Commission, State Tax Reporter, New Mexico, ¶ .0051.)

NORTH CAROLINA—A foreign corporation whose sole activity within the state consists of supervising local labor in the installation of equipment purchased from it at its out-of-state factory is not engaged in doing business within the state. If such installation cannot be efficiently and properly effected without such supervision. (Opinion of the Attorney General, State Tax Reporter, North Carolina, ¶ 2-012.)

In computing its allocation fraction for income tax purposes, a foreign contracting corporation domesticated in North Carolina may not include its proportionate part of the gross receipts of a joint venture; only those amounts actually distributed to the corporation as an individual member of the venture are includible in gross income. (Opinion of Attorney General, State Tax Reporter, North Carolina, ¶ 10-819.)

Finance companies which hold notes and other evidences of debt in connection with the transaction of their loan businesses are subject to the intangibles tax imposed by Sec. 704 of the Revenue Act. (Sec. 105-202, G. S.) (Opinion of the Attorney General to the Commissioner of Banks, State Tax Reporter, North Carolina, ¶ 25-109.)

The computation of the initial franchise tax is not restricted either to the amount of stock actually issued and outstanding on the date of incorporation or to any amount which the incorporators may have contemplated on such date. (Opinion of the Attorney General to the Commissioner of Revenue, State Tax Reporter, North Carolina, ¶ 9-003.)

Some Important Matters for October and November

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

CALIFORNIA—Quaterly Retail Sales Tax Return and Payment due on or before October 15.—Domestic and Foreign Corporations.

GEORGIA—Certified Statement for Registration due on or before November 1.—Domestic and Foreign Corporations.

INDIANA—Quarterly Gross Income Tax Return and Payment due on or before October 31.—Domestic and Foreign Corporations.

IOWA—Quarterly Retail Sales Tax Return and Payment due on or before October 20.—Domestic and Foreign Corporations.

LOUISIANA—Franchise Tax Report and Tax due on or before October 1.—Domestic and Foreign Corporations.

MASSACHUSETTS—Second Installment of Excise Tax due on or before October 20.—Domestic and Foreign Corporations.

NEW YORK—Second Installment of Income Tax of Business Corporations due on or before November 15.—Domestic and Foreign Business Corporations other than real estate companies.

NORTH DAKOTA—Quarterly Retail Sales Tax Return and Payment due on or before October 20.—Domestic and Foreign Corporations.

RHODE ISLAND—Semi-Annual Report to Division of Industrial Inspection during October and April.—Domestic and Foreign Corporations employing five or more persons in Rhode Island.

SOUTH DAKOTA—Quarterly Retail Sales Tax Return and Payment due on or before October 15.—Domestic and Foreign Corporations.

UNITED STATES—Withholding at source due on or before October 31.—Domestic and Foreign Corporations.

WEST VIRGINIA—Quarterly Business and Occupation (Gross Sales) Tax Return and Payment due on or before October 30.—Domestic and Foreign Corporations.

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In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

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